

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Fairfax County Public Library	)	File No. SLD-153862
Fairfax, Virginia	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45 ✓
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

FILED

**ORDER****Adopted: March 28, 2001****Released: March 29, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. In this Order, we deny a Request for Review filed by the Fairfax County Public Library (Fairfax), Fairfax, Virginia,<sup>1</sup> seeking review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) pursuant to a funding request for internal connections.<sup>2</sup>

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The instant appeal arises from SLD's denial of Fairfax's Year 2 application for discounted internal connections, Funding Request Numbers (FRNs) 298505 and 298506, on the grounds that a significant portion of Fairfax's funding requests included products ineligible for discounts.<sup>4</sup> In

<sup>1</sup> Request for Review by Fairfax County Public Library, of Decision of Universal Service Administrator, CC Docket Nos. 97-21 and 96-45, filed May 22, 2000 (Request for Review).

<sup>2</sup> See Letter from Schools and Libraries Division, Universal Service Administrative Company, to W. Joseph Coleman Jr., Fairfax County Public Library, issued October 26, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to W. Joseph Coleman Jr., Fairfax County Public Library, issued May 5, 2000 (Administrator's Decision on Appeal).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> See Funding Commitment Decision Letter at 4-5.

particular, SLD stated that speakerphones are ineligible for discounts. Fairfax filed an appeal with SLD on November 19, 1999.<sup>5</sup> SLD denied Fairfax's appeal on May 5, 2000, reiterating that a significant portion of Fairfax's funding request included products ineligible for discounts.<sup>6</sup>

3. Fairfax filed the instant appeal with the Commission on May 22, 2000.<sup>7</sup> In this appeal, Fairfax states that SLD's decision to deny Fairfax's funding request was arbitrary and should be reversed. In particular, Fairfax argues that: (1) SLD unfairly penalized Fairfax simply because it submitted separate funding requests, on a site-specific basis, rather than requesting all discounts for services in one funding request; (2) Fairfax made a good-faith effort to exclude ineligible services and would have excluded the speakerphones in question if they had been cited on the list of eligible and ineligible services that was published by SLD; (3) it is arbitrary to reject funding requests based on a threshold of 30 percent ineligibility, especially where estimates are concerned; and (4) SLD has no statutory authority to deny funding for otherwise eligible internal connections just because a single component may be ineligible.<sup>8</sup>

4. We have reviewed Fairfax's appeal and conclude that SLD properly denied Fairfax's applications for discounts. We reject Fairfax's argument that it was unfairly penalized for submitting separate funding requests. Fairfax was well aware of SLD's policies regarding ineligible services,<sup>9</sup> but nonetheless chose to file separate funding requests, further exposing itself to the possibility that certain locations could be denied funding while others might be granted funds. Fairfax concedes that it filed separate funding requests for accounting and budgetary convenience, not because it was required to do so by SLD.<sup>10</sup>

5. We also reject Fairfax's claim that it could not have reasonably known that speakerphones were ineligible for discounts because they were not cited in SLD's list of eligible and ineligible services. In the *Universal Service Order*, the Commission determined that support for internal connections will not be available to finance the purchase of equipment that is not needed to transport information to individual classrooms, such as personal computers, fax machines or modems.<sup>11</sup> Consistent with this determination, the Commission's Common Carrier

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<sup>5</sup> Letter from W. Joseph Coleman Jr., Fairfax County Public Library, to Schools and Libraries Division, Universal Service Administrative Company, filed November 19, 1999 (SLD Letter of Appeal).

<sup>6</sup> See Administrator's Decision on Appeal at 1.

<sup>7</sup> See Request for Review.

<sup>8</sup> See *id.* at 3-5.

<sup>9</sup> See *id.* at 3, 5.

<sup>10</sup> See *id.* at 2.

<sup>11</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9021, para. 460 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied in Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied in AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

Bureau (Bureau) issued a Public Notice stating that "telephone handsets" are not eligible for support.<sup>12</sup> In its Request for Review, Fairfax concedes that its "E-Rate consultant advised it that the speakerphones would probably be excluded as ineligible."<sup>13</sup> In particular, Fairfax's consultant, Funds for Learning, advised Fairfax that "under the SLD rules, the costs of speaker phones should [be] excluded. . . . [T]he requests for the Kingstowne and Great Falls libraries should be reduced by \$6,035.63 each."<sup>14</sup> Given the clear Commission precedent, we find no merit in Fairfax's argument that it could not have known that speakerphones were ineligible for discounts.

6. We also reject Fairfax's allegation that it is arbitrary to reject funding requests based on a threshold of 30 percent ineligibility. The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to Commission policy.<sup>15</sup> This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If 30 percent or less of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services. Thus, contrary to Fairfax's claim of arbitrariness, we find SLD's 30 percent policy to be reasonable and prudent.

7. Finally, we reject Fairfax's claim that SLD has no statutory authority to deny funding for otherwise eligible internal connections just because a single component may be ineligible. SLD implements the schools and libraries universal service mechanism under Commission guidance. The Commission's rules repeatedly state that universal service funds support only eligible services.<sup>16</sup> In this vein, the Commission has stated that schools and libraries may not receive full support for contracts that provide only a single price for a package that bundles services eligible for support with those that are not eligible for support.<sup>17</sup> Applicants are instructed that any ineligible services must be identified and segregated from services eligible for

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<sup>12</sup> See *Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries*, CC Docket No. 96-45, Public Notice, DA 98-1110 (rel. Jun. 11, 1998).

<sup>13</sup> Request for Review at 3.

<sup>14</sup> Facsimile Transmission from Sara Fitzgerald, Funds for Learning, to Joe Spakowski, Fairfax County Public Library (transmitted Oct. 13, 1999).

<sup>15</sup> See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

<sup>16</sup> 47 C.F.R. §§54.502, 54.503.

<sup>17</sup> See *Universal Service Order*, 12 FCC Rcd at 9022, para. 461-62.

funding.<sup>18</sup> In its FCC Form 471, Fairfax included a single price for a contract that includes both eligible and ineligible products. Given Commission rules and precedent, SLD properly denied Fairfax's entire funding request. Therefore, SLD clearly has authority, under these limited circumstances, to deny funding requests that include both eligible and ineligible services, and we reject Fairfax's claims to the contrary.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed on May 22, 2000 by Fairfax County Public Schools, Fairfax, Virginia, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau

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<sup>18</sup> See Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB Approval No. 3060-0806 (December 1998) at pp. 15-16.